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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re H.G., a Person Coming Under the  
Juvenile Court Law.

SACRAMENTO COUNTY DEPARTMENT OF HEALTH  
AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

S.G. et al.,

Defendants and Appellants.

C058274

(Super. Ct. No.  
JD226742)

Appellants S.G. (mother) and A.G. (father), the parents of H.G. (the minor), appeal from orders of the juvenile court adjudging the minor a dependent child of the court and removing the minor from parental custody. (Welf. & Inst. Code, §§ 360, subd. (d), 395; further statutory references to sections of an undesignated code are to the Welfare and Institutions Code.) Appellants contend the juvenile court's findings and orders are not supported by substantial evidence and the court abused its

discretion in removing and failing to return the minor to appellants. For the reasons that follow, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

On December 12, 2007, the Department of Health and Human Services (DHHS) filed an original juvenile dependency petition on behalf of the eight-year-old minor. That petition alleged mother had a temper problem, impairing her ability to provide adequate care for the minor, and which resulted in mother inflicting serious physical harm to the minor, causing extensive bruising. The petition also alleged mother had an alcohol problem that rendered her unable to provide regular care for the minor. Finally, the petition averred father failed to provide adequate care for the minor in that on at least one occasion mother physically abused the minor in father's presence but the latter failed to intervene to protect the minor. According to the petition, father's failure to protect the minor placed the minor at a substantial risk of suffering physical harm.

The social worker's report, prepared for the combined jurisdiction and disposition hearing, contained summaries of interviews conducted with the minor, mother, and father. The minor reported that mother had been striking her since the minor was three years old, and stated mother drank alcohol "all of the time." According to the minor, father sometimes attempted to intervene "by getting into a fight with" mother. Thereafter, the minor recanted her allegations in part, claiming mother did not strike her and no longer drank alcohol.

Mother and father denied that mother had physically abused the minor. Mother reported that the minor was diagnosed with severe anemia, which causes a child to bruise easily. Although that diagnosis was confirmed, a doctor contacted by DHHS suggested the condition was not consistent with the bruising found on the minor. Mother admitted a past problem with alcohol, but claimed she went to treatment in August 2006, a claim confirmed by father. However, mother acknowledged she did drink wine with dinner. In another interview, mother reported that, for the past two years, she drank about three glasses of wine daily or every other day, and had continued to do so until very recently.

The minor's paternal grandmother told DHHS that mother had an alcohol problem, as she had seen mother intoxicated "many times." The grandmother also stated she witnessed mother striking the minor. However, the paternal uncle of the minor did not believe the allegations contained in the petition were true.

In an addendum report, the minor's doctor suggested someone with anemia could have "bruising consistent with physical abuse." However, a report prepared by the University of California at Davis CAARE (Child and Adolescent Abuse, Resource, Evaluation) Diagnostic and Treatment Center noted that, although the minor's bruises reflected no pattern, they were consistent with the history of physical abuse reported by the minor. The addendum report also noted the context of the report of the minor's physical abuse was that the minor "had been injured" by

mother. Finally, that report contained the minor's plea to authorities not to "make" her return home to mother.

At the February 2008 jurisdiction/disposition hearing, the minor testified mother "used to drink a little bit," and had gone to Alcoholics Anonymous (AA) meetings. According to the minor, she last had seen mother drink alcohol in May 2007, and mother had not struck her since December 2007. Social worker Denise Brown testified mother had been ordered to submit to alcohol and drug testing, "and no positive tests have come back." Moreover, according to Brown, mother was attending AA meetings voluntarily. Brown also believed mother was going to a drug treatment program. Brown recommended return of the minor to parental custody under DHHS supervision.

Supervising social worker Keeva Pierce testified the recommendation of DHHS was placement of the minor outside the home with reunification services provided to appellants. Pierce based her recommendation on the physical abuse committed allegedly by mother and mother's alleged alcohol abuse. Pierce also told the juvenile court she believed mother was drug testing but had not begun to receive treatment.

At the conclusion of the hearing, the juvenile court sustained the petition, adjudged the minor a dependent child, and ordered the minor removed from parental custody. In support of its dispositional order of removal, the court stated in part as follows: "The Court is not going to return this child to the physical custody of either parent. The father has neglected to protect this child, and the mother continues to consume alcohol

and has not engaged in treatment which would make it safe for this child to return to her care. [¶] To that end, the Court will continue the child in out of home placement making findings by clear and convincing evidence that return of the child to the physical custody of the parent[s] would create a substantial risk of detriment to her physical or emotional well-being, and the Court will adopt the originally proposed findings and orders set forth in the report . . . . [¶] . . . [¶] The Court would note that while the Court disagrees with the recommendation from the Department expressed through the testimony at one point in time by Ms. Brown for the return of [the minor] to [appellants], the Court recognizes that it is the Court's duty to make a determination on whether the allegations are true and whether or not the child can be safely returned to and maintained in the home of the parent. [¶] The job of [DHHS] is to investigate, to assess, and to make a recommendation. Sometimes the Court concurs. Sometimes the Court does not. And in this particular case, the Court is of the opinion that [the minor] would not be safe if she were returned to a home where there has not been any appropriate level of engagement in services on the part of her parents to reduce the risk that exists to her while the mother continues to imbibe alcohol and has not demonstrated that she has modified her behavior to the point where it would be safe to return the child home and while there is no evidence whatsoever that this father would at any point intervene to help [the minor]."

## DISCUSSION

### I

Appellants claim the dispositional findings by the juvenile court that there was a substantial danger to the health and well-being of the minor and no reasonable means to protect the minor other than removing her from parental custody are not supported by substantial evidence. Relying on evidence that mother was drug testing and engaging in services on her own initiative, appellants argue that supervision, appropriate maintenance services, and a possible stay-away order directed at mother with placement of the minor in parental custody were feasible alternatives to foster care placement. Appellants also suggest the nature and degree of physical abuse were not severe and there was no evidence of ongoing alcohol abuse.

To support an order removing a child from parental custody, the juvenile court must find clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the parent's . . . physical custody." (§ 361, subd. (c)(1); *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The court also must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor" and

"state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).)

Removal findings are reviewed under the substantial evidence test, drawing all reasonable inferences to support the findings and noting that issues of credibility are matters for the trial court. (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193.) Further, evidence of past conduct may be probative of current conditions, particularly where there is reason to believe the conduct will continue in the future. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

Ample evidence at the disposition hearing supports the juvenile court's order for removal of the minor from parental custody. The court had before it evidence of mother's long-standing substance abuse history, 10 years or more, which included one attempt at detoxification in 2006, followed by more alcohol abuse. Moreover, although later it was contradicted, the record also contains evidence, in the form of statements by the minor, that at least until recently mother had consumed alcohol "all of the time." With this evidence before it, it was reasonable for the juvenile court to find that mother's use of alcohol was a significant factor in establishing a pattern of behavior by mother, placing the minor at a substantial risk of suffering harm if returned home.

Unfortunately, there was little in the record to suggest appellants were willing and able to ameliorate the problematic circumstances which led to the exercise of jurisdiction by the juvenile court. For example, both mother and father denied the

allegations in the petition pertaining to their difficulties. Moreover, in the past, although the record reflects mother had failed in a treatment program, father maintained she had succeeded.

On this record, it is not surprising the juvenile court concluded that, to ensure her protection, the minor had to be removed from parental custody. Moreover, far from constituting speculative fears, the court's concerns expressed in its comments at disposition reflect the facts and circumstances presented to it. As the transcript of its comments shows, the court suggested it feared that returning the minor too soon would lead to the same difficulties already besetting the family. Moreover, the court also implied that appellants required more time during which they would have the opportunity to learn how to more effectively address their stressors and the challenges of parenting.

Appellants' reliance on *In re Paul E.* (1995) 39 Cal.App.4th 996, is misplaced. The circumstances there involved potential hazards existing primarily outside the residence, and the minor was four years old. (*Id.* at pp. 999, 1005-1006.) Here, an older child was afraid to return to her home if mother was present.

Appellants also rely in part on *In re James T.* (1987) 190 Cal.App.3d 58, and *In re Jeannette S.* (1979) 94 Cal.App.3d 52. Those cases also are distinguishable. The minor in *In re James T.*, *supra*, 190 Cal.App.3d 58 was a teenager, and there were no dangerous circumstances present there. (*In re James T.*, *supra*,



at p. 65.) In *In re Jeannette S.*, *supra*, 94 Cal.App.3d 52, the minor was in good health and in no immediate danger from conditions in the home. (*In re Jeanette S.*, *supra*, at pp. 56-58.) Here, on the other hand, a minor not yet a teenager lived in a dangerous environment, and appellants denied any problems existed.

Appellants argue the juvenile court failed to consider less drastic measures than removal. But the record reflects, and the court found, DHHS had made reasonable efforts to eliminate the need for removal of the minor from parental custody. Unfortunately, those efforts had not succeeded. Until appellants establish they can benefit from the provision of additional services, there is ample evidence the minor's safety and well-being in appellants' home would be in serious jeopardy if she were returned to appellants' custody.

Substantial evidence supports the dispositional order of removal, which the record reflects was supported by factual findings made by the juvenile court.

## II

Appellants claim the juvenile court abused its discretion in removing the minor from parental custody before DHHS had provided reasonable services to maintain the family. According to appellants, the services provided were not designed for reunification. Moreover, they allege, the juvenile court failed to consider the services in which appellant was participating on her own initiative.

The record rebuts the claims made by appellants. First, evidence was adduced suggesting the minor was so traumatized that she begged authorities not to return her to mother's care. Moreover, in the past father had been unable or unwilling to intervene successfully on the minor's behalf. Finally, mother had failed previously to ameliorate her alcohol abuse problem.

Considering the urgency of the situation and mother's history of alcohol abuse, the juvenile court had little choice but to maintain the status quo and order the removal of the minor to continue without further considering any attempt to return the minor to parental custody. The court had before it evidence of appellant's recent efforts to address her difficulties. Contrary to the claim made by appellants, the record reflects the court considered those efforts, but did not believe they were sufficient. Substantial evidence supports that conclusion. There was no abuse of discretion.

### III

The final claim made by appellants is that the juvenile court abused its discretion in failing to order the return of the minor to parental custody with appropriate supervision and services. Alleging the court ignored evidence that mother was engaged in services on her own and no longer drinking alcohol, appellants contend the juvenile court failed to consider alternatives to the minor's removal from their custody. Moreover, they suggest, the minor could have been returned to father on condition that mother stay away, and they claim also the court could have imposed additional conditions and

requirements, designed to safeguard the minor's safety in the home.

The evidence before the juvenile court suggested that, even with the minor placed in the home under DHHS supervision with only father present, the minor's safety would have remained at a substantial risk of being jeopardized. There are several reasons for this conclusion. First, despite the minor's reports, father denied he had failed to protect the minor adequately. In fact, he denied ever witnessing mother striking the minor. Moreover, mother's treatment history included one failed effort at detoxification and an absence of follow-up treatment. Only recently did mother begin to participate in a treatment program by accepting referrals from DHHS. All of this evidence was before the juvenile court, which considered it. In sum, it is difficult to determine that, given the record of father's past failures and current denials, he could be counted on reliably to obey any stay-away order directed at mother.

Contrary to appellants' claims, the juvenile court did not find mother had failed to engage in treatment. Instead, it stated that mother had not "engaged in treatment which would make it safe for [the minor] to return to her care." The court also opined that there had not been "any appropriate level of engagement in services" on the part of appellants. As we have indicated, the record supports those findings, especially in light of the history of mother's alcohol problem and father's failure to protect the minor adequately.

In making its determinations, by statute the juvenile court is required to review both the reports submitted and the efforts made by the parent. Moreover, DHHS has the statutory burden of establishing that return of the minor to parental custody would create a substantial risk of detriment to the minor's well-being. (§ 361, subd. (c)(1).) Of course, it is the court's function to assess the credibility of the evidence and to make required statutory determinations, as it is axiomatic that it is within the exclusive province of the juvenile court to make such credibility determinations. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 598.)

In sum, we conclude that it was well within the province of the juvenile court to conclude that returning the minor to appellants' custody would create a substantial risk of detriment to the minor, even with the provision of strict DHHS supervision. The record as it pertains to father's denials and his enabling of mother in the past by itself supports that conclusion. Accordingly, the court's decision to continue the minor's placement outside of appellants' custody was not an abuse of the court's discretion. (Cf. *In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

#### DISPOSITION

The orders of the juvenile court are affirmed.

\_\_\_\_\_, J.  
NICHOLSON

We concur:

\_\_\_\_\_, P. J.  
SCOTLAND

\_\_\_\_\_, J.  
SIMS